IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5778 OF 2006

Larsen & Toubro Ltd. .. Petitioners.
Vs.
Mr.Kantilal Champalal
Kothari & Ors. .. Respondents.

Mr.N.V.Walawalkar with Mr.V.Trivedi, Mr.Pankaj Sawant and Ms.R.Rastogi i/b Manilal Ambalal Kher & CO. for the petitioner.

Mr.A.V.Anturkar with Mr.P.N.Vora i/b M/s.Pramod Kumar and Co. for respondent nos.1, 2, 5, 6, 8 and 9.

Mr.A.Patil i/b Ms.Shakuntaladevi for respondent no.10.

CORAM : D.B.BHOSALE, J.

DATED : 31ST AUGUST, 2006

P.C.:

. Heard Mr.Walawalkar, learned senior counsel for the petitioners and Mr.Anturkar, learned counsel for respondent no.1, 2, 5, 6, 8 and 9 and Mr.Patil, learned counsel for respondent no.10.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Anturkar, learned counsel waives service for respondent nos.1, 2, 5, 6, 8 and 9 and Mr.Patil, learned counsel waives for respondent no.10.

3. The petitioners have impugned the order dated 12.7.2006 rendered by the trial Court on interim

notice no.33 of 2006 in TE&R Suit No.32/35 of 2001. By that order, the notice has been made absolute, allowing the respondent-plaintiff to carry out an amendment as per the schedule of amendment annexed to the notice. That order was carried further by the petitioner-defendant in revision, bearing No.54 of 2006. The revisional court dismissed the revision and confirmed the order passed by the trial Court. The aforesaid orders passed by the trial Court, and the revisional court are impugned in the present writ petition. Mr.Walawalkar, learned senior counsel for the petitioners at the outset invited my attention to a small bracketed portion in paragraph 2 of the schedule to be added as paragraph 8A to contend that by adding the bracketed portion in the pleadings, the plaintiff has withdrawn the admissions given in favour of the defendant and, that such amendment cannot be allowed. Paragraph 8A with the bracketed portion therein reads thus:

> "8A. Prior to the filing of the suit, Mr.Pyarelal Kothari who was a co-owner had expired. As no letters of administration were obtained, the plaintiff Nos.6 and 7 were joined as plaintiffs as the heirs of the deceased late Mr.Pyarelal Kothari. However, during the pendency of this suit, letters of administrations were obtained in respect of the estate of late Mr.Pyarelal Kothari under which the plaintiff No.6 has been appointed as the executor to the estate of Mr.Pyarelal Kothari including the suit property. **{Hence, when the plaintiff No.7 expired, she had no**

right in respect of the suit property. I say that the plaintiff No.7 had given up all her rights therein in favour of the plaintiff No.6 while grant of the letters of administration were obtained on 27th March, 2003 in favour of plaintiff no.6. It is the plaintiff no.6 alone who is now solely entitled to all the estate of Mr.Pyarelal Kothari, including the undivided share in the suit property.} The plaintiff no.7 expired on 25th June, 2003 and hence her name has been deleted from the plaint. Hereto annexed and marked Exhibit-C is a copy of the Letter of Administration dated 27th March, 2003 granted by the Hon'ble High Court in Petition No.768 of 2002 in respect of the estate of Mr.Pyarelal Kothari. Hereto annexed and marked Exhibit-D is a copy of the property card showing the name of the plaintiff no.6 as the co-owner of the suit property in place of deceased Mr.Pyarelal Kothari."

4. Mr.Anturkar, learned counsel for the defendants, on instructions, submits that the defendants are prepared to delete the aforesaid bracketed portion in paragraph 8A and he may be permitted to do so and carry out the amendment. Since the controversy is centered around the aforesaid bracketed portion in paragraph 8A and that the respondent-defendants have agreed to delete the said portion, nothing further survives in the writ petition. However, Mr.Walawalkar submits that in view of the above,the observations made by the trial Court in paragraph 13 of the impugned order dated 12.7.2006 may be set aside. Mr.Anturkar has not opposed this prayer. In the circumstances I pass the following order:

(a) The statement of Mr.Anturkar that the defendants are prepared to delete the aforesaid bracketed portion in paragraph 8A of the schedule of amendment is accepted. Except the bracketed portion in paragraph 8A the respondent-plaintiff is allowed to carry out the amendment within two weeks from the date of receipt of this order.

(b) It would be open for the defendants to file additional written statement, if so advised, within four weeks therefrom.

(c) The observations made by the trial Court in paragraph 13 of the impugned order are set aside.

(d) The trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferably within a period of eight months from the date of carrying out the amendment as aforestated and/or filing of the additional written statement, whichever is latter. The parties are directed to co-operate for disposal of the suit within the time stipulated.

. Rule, accordingly, stands disposed of in the aforesaid terms.

(D.B.Bhosale, J.)